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MICHAEL RODAK, JR., CLE

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-240

J. MINOS SIMON,

Petitioner,

versus

JOHN A. DIXON, JR., ET AL,

Respondents.

PETITION ON BEHALF OF J. MINOS SIMON FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS, FIFTH CIRCUIT

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TABLE OF CONTENTS

	Page
TABLE OF CITATIONS	ii-vi
JURISDICTION	2
QUESTION PRESENTED	2-6
CONCISE STATEMENT OF THE CASE	6-12
(a) Procedure in the courts below	6-7
(b) Undisputed facts	7-12
SUMMARY OF ARGUMENT	12-14
ARGUMENT	14-48
(a) Petitioner's Brief Falls Under the Protective Aegis of Due Process	14-24
(b) Denial of a Hearing Violates Due Process	24-26
(c) The Sanction of Warning Constitutes a Prior Restraint of Speech	26-30
(d) Rule IX, Section 7 of the Louisiana Supreme Court is Void for Overbreadth and Vagueness	30-48
CONCLUSION	48-49
CERTIFICATE OF SERVICE	50
APPENDIX A — PER CURIAM DECISION OF THE FIFTH CIRCUIT, COURT OF APPEALS	1a
APPENDIX B — ORAL REASONS FOR JUDGMENT OF THE DISTRICT COURT, EASTERN DISTRICT OF LOUISIANA	2a

TABLE OF CITATIONS

Page

ARTICLES OF INCORPORATION OF LOUISIANA STATE BAR ASSOCIATION, Article 14, Section 15 ..... 14, 15

BASISTA v. WEIR, 340 F.2d 74 29

BAGGETT v. BULLITT, 377 U.S. 360, 84 S.Ct. 1316 ..... 43, 44, 45, 46

BIRNBAUM v. TRUSSELL, 371 F.2d 672 29

BOUIE v. CITY OF COLUMBIA, 378 U.S. 347, 84 S.Ct. 1697 20

BRAZIER v. CHERRY, 293 F.2d 401 29

BRINKERHOFF FARIS TRUST & SAVINGS CO. v. HILL, 281 U S. 673, 50 S.Ct. 451 ..... 18, 19

BROWN v. BROWN, 368 F.2d 992 29

CANCINO v. SANCHEZ, 379 F.2d 808 29

CIVIL RIGHTS CASES, 109 U.S. 3, 3 S.Ct. 18 ..... 18, 19

COHEN v. NORRIS, 300 F.2d 24 29

COLEMAN v. JOHNSTON, 247 F.2d 273 29

CONNALLY v. GENERAL CONSTRUCTION COMPANY, 269 U S. 385, 391, 46 S.Ct. 126 ..... 41, 42

COOKE v. UNITED STATES, 267 U.S. 517, 45 S.Ct. 390 25

COOPER, ET AL v. AARON, ET AL, (1958), 358 U.S. 1, 78 S.Ct. 1401 29

CRAIG v. HARNEY, 331 U.S. 367, 67 S.Ct. 1249 ..... 21, 22

TABLE OF CITATIONS (Continued)

Page

CRAMP v BOARD OF PUBLIC INSTRUCTION OF ORANGE COUNTY, FLORIDA, 368 U.S. 278, 280, 82 S.Ct. 275 ..... 42, 43

DEWITT v. PAIL, 366 F.2d 682 29

FREEDMAN v. STATE OF MARYLAND, 380 U.S. 51, 85 S.Ct. 734 28

GROPPIE v. LESLIE, 404 U.S. 496, 92 S.Ct 582 24

GOODING v. WILSON, 92 S.Ct. 1103 (1972) 34, 35

GRAYNED v. CITY OF ROCKFORD, 92 S.Ct. 2294 ..... 46, 47

HAGUE v. C.I.O., 307 U.S 496, 59 S.Ct. 954 29

HERNDON v. LOWRY, 301 U.S. 242, 57 S.Ct. 732, 81 L.Ed. 1066 ..... 40, 41, 45, 46

HOLDEN v. HARDY, 169 U.S. 366, 18 S.Ct. 383 25

HOLT v. COMMONWEALTH OF VIRGINIA, 381 U.S. 136, 85 S.Ct. 1375 (1965) 16, 23, 24, 48

HUGHES v. NOBLE, 295 F.2d 495 29

IN RE LITTLE, 404 U.S. 553, 92 S.Ct. 659 (1972) 23

IN RE MCCONNELL, 370 U.S 230, 82 S.Ct. 1288 (1962) 23, 24

IN RE MURCHISON, 349 U.S. 133, 75 S.Ct. 623 25

IN RE SAWYER, 360 U.S. 622, 79 S.Ct. 1376 22

JENKS v. HENYS, 378 F.2d 334 29

JOSEPH BURSTYN, INC. v. WILSON, 343 U.S. 495, 72 S.Ct. 777 28

TABLE OF CITATIONS (Continued)

Page

KEYISHIAN v. BOARD OF REGENTS OF UNIVERSITY OF STATE OF NEW YORK, 385 U.S. 589, 87 S.Ct. 675 28

KONIGSBERG v. STATE BAR, 353 U.S. 252, 77 S.Ct. 722 19

LANZETTA v. NEW JERSEY, 306 U.S. 451, 458, 59 S.Ct. 618 42

MAYBERRY v. PENNSYLVANIA, 400 U.S. 455, 91 S.Ct. 499 25

MONROE v. PAPE, 365 U.S. 167, 81 S.Ct. 473 29

MORGAN v. LABIAK, 368 F.2d 338 29

NAACP v. ALABAMA, EX REL., PATTERSON, 357 U.S. 449, 78 S.Ct. 1163 19

NAACP v. BUTTON, 371 U.S. 415, 83 S.Ct. 328 ..... 19, 26, 28, 33, 34, 40, 41, 47, 48

NESMITH v. ALFORD, 318 F.2d 110 29

OFFUTT v. UNITED STATES, 348 U.S. 11, 75 S.Ct. 11 25

PAPISH v. BOARD OF CURATORS OF UNIVERSITY OF MISSOURI, 93 S.Ct. 1197 (1973) 34

POLK v. STATE BAR OF TEXAS, 480 F.2d 999 (1973) 30

PLUMMER v. CITY OF COLUMBUS, OHIO, 94 S.Ct. 17 (1973) 34

PYLE v. KANSAS, 317 U.S. 213, 63 S.Ct. 177 29

RIVERS v. ROYSTER, 360 F.2d 592 29

TABLE OF CITATIONS (Continued)

Page

SCHWARE v. BOARD OF BAR EXAMINERS, 353 U.S. 232, 77 S.Ct. 752 19

SHELLY v. KRAEMER, 334 U.S. 1, 68 S.Ct. 836 ..... 18, 19, 20

SMITH v. CALIFORNIA, 361 U.S. 147, 151, 80 S.Ct. 215, 217, 4 L.Ed.2d 205 ..... 40, 45

SMITH v. HAMPTON TRAINING SCHOOL FOR NURSES, 360 F.2d 577 ..... 29, 47

SPEISER v. RANDALL, 357 U.S. 513, 526, 78 S.Ct. 1332, 1342 ..... 28, 45, 47, 48

STATE OF MISSOURI, EX REL., GAINES v. CANADA, ET AL, (1938) 305 U.S. 337, 59 S.Ct. 232 29

STROMBERG v. CALIFORNIA, 283 U.S. 359, 51 S.Ct. 532, 75 L.Ed. 1117 ..... 41, 45

THOMAS v. COLLINS, 323 U.S. 516, 537, 65 S.Ct. 315, 325, 89 L.Ed. 430 ..... 15, 41

THORNHILL v. ALABAMA, 310 U.S. 88, 60 S.Ct. 736 46

TRINKLER v. STATE OF ALABAMA, 94 S.Ct. 265 (1973) 46

TRUSTEES OF DARTMOUTH COLLEGE v. WOODWARD, 4 Wheat 518, 4 L.Ed. 629 25

UNITED STATES v. C.I.O., 335 U.S. 106, 142, 68 S.Ct. 1349, 1367, 92 L.Ed. 1849 41

UNITED STATES v. CLASSIC, 313 U.S. 299, 61 S.Ct. 1031 29

TABLE OF CITATIONS (Continued)

Page

UNITED STATES, EX REL., POTTS v. RABB, 141 F.2d 45 29

VALLE v. STINGEL, 176 F.2d 697 29

WINTERS v. NEW YORK, 333 U.S. 507, 509-510, 68 S.Ct. 665, 667, 671, 91 L.Ed. 840 ..... 40, 46

STATUTES

LOUISIANA SUPREME COURT, RULE IX, Section 7 ..... 6, 7, 9, 10, 11, 30, 31, 36, 40, 44

LSA-R.S. 13:4611 ..... 4, 13, 27

TITLE 28 USCA, SECTIONS 1254, 2101 2

TITLE 28, U.S.C.A., Sections 1343(3)(4), 2201, 2202, 2281, 2284 6

TITLE, 42, U.S.C.A., Sections 1981, 1983, 1988 6

MISCELLANEOUS

FIRST AMENDMENT 14, 18, 26, 33, 36

FOURTEENTH AMENDMENT 14, 19

WEBSTER'S NEW INTERNATIONAL DICTIONARY, SECOND EDITION 36, 37, 38

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TO THE HONORABLES, THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE UNITED STATES SUPREME COURT:

This is an application for a writ of certiorari to the United States Court of Appeals, Fifth Circuit, as to its per curiam decision rendered on May 7, 1974, timely rehearing denied on June 10, 1974, affirming a decision of the United States District Court, Eastern District of Louisiana, whereby petitioner's claim for injunctive relief was dismissed on motion for summary judgment. Neither decision is officially reported in the fed-

eral case reporter system. The per curiam decision of the Court of Appeals in its entirety reads as follows: "AFFIRMED, See Local Rule 21," which is reproduced in the Appendix, Page 41. The reasons for judgment of the District Court are likewise reproduced in the Appendix, Page 42-56.

JURISDICTION

This application for a writ of review invokes the jurisdiction of the court pursuant to 28 U.S.C.A. 1254; 28 U.S.C.A. 2101 and Supreme Court Rules 19, et seq.

QUESTION PRESENTED

This application presents the important question of the freedom of speech of every lawyer of the State of Louisiana, while acting in the course and scope of his duty of advocating the rights of his clients before the courts of Louisiana. Subsidiary questions of substantive and procedural due process and prior restraint of speech underlie the overriding question.

Petitioner, as attorney for his client, in a state court proceeding made application for a writ of review with the Louisiana Supreme Court as to an intermediate appellate court decision. The application contained an exhaustive statement of all the facts and the law applicable. The essential controversy presented in that state court application related to the question of the bias of a physician who examined his client in connection with her claim for compensation for physical injuries. The Louisiana Supreme Court granted the ap-

plication and in due course assigned the matter for hearing. A supporting brief containing the same essential argument as contained in the application for review was filed with the Louisiana Supreme Court. Thereafter the matter was assigned for hearing before the Louisiana Supreme Court and oral argument to the same substantial effect as argument contained in the brief was presented and accepted by the members of the Louisiana Supreme Court. Some two months thereafter, without prior complaint, without prior notice, and without a hearing, or an opportunity for a hearing, five of the seven state Supreme Court justices concurred in finding petitioner guilty of a violation of Rule IX, Section 7 of the Louisiana Supreme Court allegedly for the speech included in his printed brief in advocating the question of bias in controversy and thereupon inflicted upon petitioner the sanctions of reprimand and warning. Not once and no where did the justices of the Louisiana Supreme Court refer to any specific language or to any words or combination of words of the brief that was adjudged offensive, for which petitioner was adjudged guilty of such professional ignominy. Two of the justices dissented from the adjudication of contemptuous conduct, Mr. Justice Summers of the Louisiana Supreme Court saying: "The language of the brief which the court finds to deserve this treatment is counsel's version of the facts and the testimony which he interprets. Counsel is entitled to charge a witness with bias if he finds a basis for it in the record. Of course, we may not agree with his version of the evidence, but we should not deny him the right to argue his point in the strongest terms. * * *"

Petitioner does not know to this date what words he has used, what statement he has made or in what manner he may have made any statement which the justices of the Louisiana Supreme Court found offensive. Moreover, he does not know what speech he is to avoid in the future to safeguard himself against another similar adjudication, in which event he could then be sentenced to ten days in jail or to pay a $200.00 fine or both, pursuant to LSA-R.S. 13:4611. Furthermore, the adjudication of guilt and the probation of warning, forming part of an official opinion of the Louisiana Supreme Court, is destined to be published in the legal archives of Louisiana and the case reporters published by West Publishing Company, notably the Louisiana Reporters and the Southern Reporters.[1] Thus, the professional degradation inflicted upon petitioner is due to be widely circulated among his professional brethrens and members of the judiciary. The speech for which petitioner has been condemned is non-insulting, non-irrelevant and wholly related to the legal question of bias, which was in controversy, and was necessary to the advocacy of his client's right to judi-

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[1]During the preparation of this petition, petitioner discovered that West Publishing Company, in its August 15, 1974, advance sheet publication of its Southern Reporter case report, published the state court opinion containing the concept adjudication of petitioner. See *Robin v. Associated Indemnity Co.*, La., 297 So.2d 427. In due course, unless enjoined, this decision will be published in the permanently bound volumes of Southern Reporters, wherein petitioners' ignominious condemnation will be ossified forever as a badge of professional degradation for his children, grandchildren ad infinitum, his colleagues, judges, members of the legal profession and his friends to see and read. No one will ever know that in truth petitioner is not guilty of such professional misconduct or dishonor, if injunctive relief is not granted.

cial redress. The essential question presented for review, therefore, may be succinctly verbalized in the following manner:

Is a lawyer-citizen, as a matter of elementary constitutional right, entitled to injunctive relief to enjoin the enforcement and publication of a state court order (which is based upon a state court rule) which adjudges him guilty of contempt and imposes the sanctions of reprimand and warning and portends of future imprisonment and fines,

(a) where the rule of court, as authoritatively interpreted and applied in fashioning the order complained of, curtails non-insulting and non-irrelevant speech *essential* to an effective discussion of issues in litigious controversy before the court;

(b) where such an order was issued without prior notice or prior hearing;

(c) where the order condemns the lawyer's unobscene, non-insulting but essentially relevant speech made in a written brief on behalf of his client while advocating the interest of his client before the court;

(d) where the court in such a case does not single out nor identify the speech considered offensive;

(e) where the speech is truthful and respectful of the court but which constitutes relevant criticism of a witness whose bias is at issue;

(f) where such an order denies due process, free speech and operates as a prior restraint on the lawyer's future speech on behalf of his clients in that case and all future cases; and

(g) where the order which contains the scandalizing condemnation of the lawyer is destined soon to be published permanently in the official archives of the state involved and in the case reporter system of West Publishing Company, particularly the Louisiana Reporters and the Southern Reporters?

CONCISE STATEMENT OF THE CASE

(a) Procedure in the courts below

Invoking the jurisdiction of the District Court under Title 42 U.S.C.A., Sections 1981, 1983 and 1988, as well as under Title 28 U.S.C.A., Sections 1343(3)(4), and Sections 2281 and 2284 petitioner sought injunctive relief, both temporary and permanent, to enjoin and restrain the named defendants, their representatives, employees or successors in office from executing and enforcing against petitioner and those similarly situated Rule IX, Section 7 of the Rules of the Louisiana Supreme Court of the State of Louisiana and an order or decree granted by five of the seven justices of the Louisiana Supreme Court based upon said Rule IX, Section 7, adjudging petitioner guilty of its violation and imposing sanctions of reprimand and warning against petitioner. Petitioner further invoked the provisions of Title 28 U.S.C.A., Sections 2201 and 2202 and requested declaratory judgment as to the constitution-

al validity of said Rule IX, Section 7 and the decree made in pursuance thereof and further requested the composition of a three-judge district court.

On June 15, 1973, petitioner's request for a temporary restraining order was denied by District Judge Jack Gordon. On June 25, 1973, noting that the chief judge of the Court of Appeals for the Fifth Circuit declined to constitute a three-judge district court, Judge Gordon ordered that further proceeding in the action "be conducted accordingly." On September 10, 1973, petitioner filed a motion for summary judgment as to all relief sought which was assigned for hearing for September 19, 1973. Thereafter defendants filed a motion for summary judgment which was assigned for hearing also for September 19, 1973. On September 19, 1973, petitioner's motion for summary judgment was denied, but defendants' motion for summary judgment was granted and a formal judgment was rendered on September 21, 1973. Petitioner's appeal from that decision was dismissed by per curiam decision and without the assignment of any reason.

(b) Undisputed facts

Petitioner was admitted to the Louisiana State Bar Association and licensed as a lawyer in June, 1946, and has ever since remained a member in good standing. Since his admission he has engaged in the active practice of law primarily as a trial lawyer. He has been admitted to practice before all of the courts of the State of Louisiana, the United States District Courts for the Eastern and Western Districts of Lou-

isiana, the United States Court of Appeals, Fifth Circuit, and the United States Supreme Court and is currently and has continuously since his admission been a lawyer in good standing before all of these courts. Petitioner engages in the practice of both criminal and civil law as a trial lawyer and in the course of his practice he associates other lawyers with him.

On or about February 1, 1971, petitioner, acting in the capacity of an attorney at law, filed a lawsuit in the State District Court at Lafayette, Louisiana, on behalf of a client to recover damages for physical injuries. While the lawsuit was pending, defendants in that lawsuit made application for a physical examination of petitioner's client. In response, petitioner requested the imposition of conditions in the event such an examination was permitted by the Court. On hearing of the application for physical examination, defendants in that case called the prospective physician-examiner as a witness. During the course of the hearing, the witness verbalized an unprovoked, vitriolic and personal attack against petitioner. The trial court ordered the examination, but imposed the conditions requested by appellant on behalf of his client. In an application for a new trial, petitioner, functioning as counsel for his client, requested the recusation of said physician on account of his bias, as reflected by his testimony. This recusation application was denied. On application of defendants, an intermediate state appellate court reversed the trial judge.

Thereafter, petitioner, as attorney for his client, made application for review with the Louisiana Su-

preme Court as to the appellate court decision. The application contained an exhaustive statement of all the facts and the law applicable. The Louisiana Supreme Court, acting through Mr. Justice Dixon, granted the application and in due course assigned the matter for hearing. Petitioner timely filed with the Louisiana Supreme Court a supporting printed brief containing the *same essential argument* that was contained in his application for review and favorably acted upon by Mr. Justice Dixon. On March 28, 1973, the assigned hearing date, petitioner appeared before the justices of the Louisiana Supreme Court and presented oral argument in support of his application. The oral argument was substantially *identical* to the printed argument in brief and to the argument contained in the preceding application for review. During the course of this oral argument, the justices of the Louisiana Supreme Court requested the petitioner to file an additional brief on questions that arose during oral argument and not covered by the printed brief. This petitioner did.

On May 7, 1973, the Louisiana Supreme Court reversed the intermediary appellate court decision by reinstating the conditions of examination imposed by the trial judge, but refused to disqualify the physician for bias. During the course of the opinion, however, without prior notice, complaint or criticism, and without any hearing whatsoever, petitioner was pronounced guilty of a violation of Rule IX, Section 7 of the Louisiana Supreme Court allegedly for the speech included in his printed brief and the sanctions of reprimand and warning were inflicted upon him forthwith.

This adjudication of guilt and this warning decree as to future speech were contained in Footnote 3 to the opinion, which in part pertinent reads as follows:

> "Plaintiff's original brief contains language that is discourteous, and is not 'free from insulting or irrelevant criticism,' in violation of our Rule IX, Section 7. We choose not to return the brief on this occasion out of consideration for the client. We impose, instead, the sanctions of reprimand and warning."

Not once and nowhere did the justices of the Louisiana Supreme Court refer to any specific language or to any words or combination of words of the brief that was considered to be "insulting or irrelevant criticism." Mr. Chief Justice Joe Sanders and Mr. Justice Frank Summers of the Louisiana Supreme Court, however, disagreed with the action of the majority in respect to the reprimand and warning inflicted on petitioner. In dissenting as to this, Mr. Justice Summers said:

> "I agree with the reasons assigned and the result reached in all respects except the reprimand of plaintiff's counsel. The language of the brief which the Court finds to deserve this treatment is counsel's version of the facts and the testimony which he interprets. Counsel is entitled to charge a witness with bias if he finds a basis for it in the record. Of course, we may not agree with his version of the evi-

dence, but we should not deny him the right to argue his point in the strongest terms.

"I find counsel's language immoderate and lacking in restraint, perhaps, but I cannot agree that his right to vigorously charge a witness with bias or other disqualification is 'insulting or irrelevant criticism.' Rules, La. Supreme Court, IX, Sec. 7. *The bias he charges is not only not irrelevant, it is the very basis of this entire controversy.* (Emphasis supplied).

"I respectfully concur."

While there existed neither substantive nor procedural law remedy in the State Supreme Court in respect to such an adjudication, petitioner nevertheless petitioned for leave of the Louisiana Supreme Court to file a petition of intervention for the purpose of bringing about a reversal of that official action. His application, however, was summarily denied without the assignment of any oral or written reasons whatever.

The opinion, including the decree of reprimand and warning, which adjudges petitioner guilty of a professional ignominy and imposes a probation of warning as to future speech, is destined to be published in the legal archives of Louisiana and the case reporters published by West Publishing Company; notably the Louisiana Reporters and the Southern Reporters. Thus, the professional degradation inflicted upon petitioner is due to be widely circulated among his professional

brethrens and members of the judiciary. Petitioner, therefore, applied to the United States District Court, Eastern District of Louisiana, for injunctive relief in respect to the enforcement and publication of the offending decree mentioned. His lawsuit, however, was dismissed. On appeal, the United States Court of Appeals, Fifth Circuit, also dismissed his lawsuit without giving petitioner the opportunity even to orally argue and without assigning any reason for the dismissal. Petitioner's timely application for rehearing was denied by per curiam decision of June 10, 1974, and in its entirety reads as follows:

> "IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby denied."

SUMMARY OF ARGUMENT

Petitioner, acting in the capacity of legal advocate, prepared and filed a printed brief with the Louisiana Supreme Court in which he presented argument in support of a legal issue in controversy, i.e., whether or not the bias of a witness disqualified him as an impartial examiner of his client to determine the physical disability of the client. The words used in the brief were plain English, in no way offensive in themselves, scrupulously respectful of the Court, and wholly appropriate to support the charge of bias of the witness. If the charge of bias was "insulting", it was inherent in the issue of bias raised, as to which it was the inescapable duty of petitioner to argue and advocate.

Without prior notice or prior filing of any complaint whatever, without a prior hearing of any nature whatsoever, and after having the printed brief under consideration for several weeks, five justices of the Louisiana Supreme Court seized upon a constitutionally vague rule of the Court and convicted or adjudged petitioner guilty of contempt or a violation of the rule and imposed the sanctions of reprimand and warning allegedly for *undisclosed* speech contained in the brief filed by petitioner. The decree of warning will continue in effect indefinitely into the future. Moreover, petitioner (an active trial lawyer in good standing since 1946) has never been informed of the specifics of any wrongdoing, and thus does not know what proscribed speech he is to avoid in the future in order to avoid the future imposition of punishment under the existing sanction of warning. If his present conviction of a violation of the Court rule is construed as a contempt violation, then, pursuant to LSA-R.S. 13:4611 petitioner may be sentenced to ten days in jail or to pay a TWO HUNDRED AND NO/100 ($200.00) DOLLAR fine, or both, should he inadvertently again engage in the *unknown* and *undisclosed* speech found to be offensive by these five judges. Forasmuch as speech resides in the very center of legal advocacy, the sanction of warning has a chilling effect on petitioner's free speech and constitutes a prior restraint of his free speech and thus adversely affects his right to earn a living as an active trial lawyer.

Furthermore, the sanctions imposed are contained in a footnote to an opinion as to the merits of a litigation then pending before the Louisiana Supreme Court.

The opinion, which contains the condemnation of petitioner, is destined soon to be published *permanently* in the official archives of the State of Louisiana and in the case reporter system of West Publishing Company, particularly the Louisiana Reporters and the Southern Reporters. Thus, if such publication is not restrained, then the scandalizing condemnation of petitioner will become a matter of public record, notwithstanding that it was issued in violation of petitioner's rights under the First and Fourteenth Amendments to the United States Constitution. Because of the immunity of judges and the quasi-privilege of West Publishing Company in respect to the publication of said illegal decree, petitioner has no effective remedy at law other than injunctive relief.

ARGUMENT

(a) Petitioner's Brief Falls Under The Protective Aegis Of Due Process

Article 14, Section 15 of the Articles of Incorporation of the Louisiana State Bar Association in part pertinent provides:

> "The lawyer owes entire devotion to the interest of the client, warm zeal in the maintenance and defense of his rights and the exertion of his utmost learning and ability, to the end that nothing be taken or be withheld from him, save by the rules of law, legally applied. No fear of judicial disfavor or public unpopularity shall restrain him from the full dis-

> charge of his duty. In the judicial forum the client is entitled to the benefit of *any and every remedy and defense* that is authorized by the law of the land, and *he may expect his lawyer to assert every such remedy or defense.*"

Thus it was the professional duty of petitioner to challenge the fitness of the physician proposed by his client's adversary to conduct a physical examination of her. The question of her physical fitness was the central issue of her tort action filed in state court. The impartiality of this proposed physician was therefore a question of overriding significance to the success of her litigation. It was petitioner's opinion, based upon the testimony given by this proposed physician, that he was hopelessly biased against her indirectly through petitioner. Her available remedy in respect to such suspected bias was to oppose the appointment of this physician on that basis. The constraints of professional duty left petitioner with no alternative as to this remedy. He accordingly challenged the fitness of this physician by proper motion. The question of the physician's bias therefore was one of the central issues presented to the Louisiana Supreme Court for its determination. The constraints of professional duty required petitioner to support the charge of bias with argument as to that bias. This he did in the filing of his original brief before the Louisiana Supreme Court.

Legal argument as to factual controversies and applicable law is a form of free trade in ideas. "Free trade in ideas", said the Court in *Thomas v. Collins*, 323 U.S. 516, 537, 65 S.Ct. 315, 326, "means free trade

in the opportunity to persuade to action, not merely to describe facts." Legal advocacy therefore, involves the effort of petitioning the courts for redress and in articulating grievances sought to be redressed. An effective advocacy is but a sinecure if it is shorn of the opportunity to persuade to action. Effective advocacy, respectful always, but never unctuous, nevertheless to meaningfully exist, must engage the practitioner in describing facts, drawing inferences from them, distinguishing between what is ostensible and real, what is probable and improbable, what is significant and trivial, and finally in making a partisan appeal to persuade to action favorably to the cause which he champions. And to keep faith with his institutional calling, he must advocate without fear of reprisal or censure; without fear of offending those guilty of offensive conduct, which trench on the legal rights of his client. The brief in question instances such an advocacy. Thus petitioner did what the court in *Holt v. Commonwealth of Virginia*, 381 U.S. 131, 85 S.Ct. 1375 (1965), said he had a right and duty to do.

Holt, an attorney, filed a motion for change of venue on behalf of his client (who was charged with contempt) predicated upon the charge that the presiding judge was biased. In the motion Holt charged that the presiding judge was acting "as police officer, chief prosecution witness, adverse witness for the defense, grand jury, chief prosecutor and judge" and also that said judge "did intimidate and harass and is intimidating and harassing" Holt. The trial judge adjudged Holt as well as his client to be in contempt of court for having filed a motion containing the assertions men-

tioned and assessed a fine of FIFTY AND NO/100 ($50.00) DOLLARS against each. In reversing, the Supreme Court observed that, "It is settled that due process and the Sixth Amendment guarantee a defendant charged with contempt such as this 'an opportunity to be heard in his defense — a right to his day in court — * * * and to be represented by counsel' * * * The right to be heard must necessarily embody a right to file motions and pleadings essential to present claims and raise relevant issues. * * * And since 'A fair trial in a fair tribunal is a basic requirement of due process,' * * * it necessarily follows that motions for change of venue to escape a biased tribunal raise constitutional issues both relevant and essential. * * * Consequently, neither Dawley nor his counsel could *consistently with due process* be convicted for contempt for filing these motions unless it might be thought that there is something about the language used which would justify the conviction." (85 S.Ct. at p. 1378)

The Court then observed at p. 1378 that, "The words used in the motions were plain English, *in no way offensive in themselves, and wholly appropriate to charge bias* * * *. But if the charges were 'insulting' it was inherent in the issue of bias raised, an issue which we have seen had to be raised, according to the charges, to escape the probability of a constitutionally unfair trial.*" In concluding the Court held: (85 S.Ct. at Pp. 1378-1379)

> "Our conclusion is that these petitioners have been punished by Virginia for doing noth-

> ing more than exercising the constitutional right of an accused and his counsel in contempt cases such as this to defend against the charges made. The judgment of conviction is reversed and the cause is remanded to the Supreme Court of Appeals of Virginia for further proceedings not inconsistent with this opinion."

Similarly, if the brief filed and authored by petitioner is "insulting", it is because it is inherent in the issue of bias raised, an issue which had to be raised in order to protect the interest of his client. The question of the bias of the proposed physician who was to conduct the examination was a relevant issue. The words used in the brief are in no way offensive in themselves and are wholly appropriate to support the charge of bias. But, for doing this, petitioner was adjudged in violation of the Louisiana Supreme Court rule, and thus in technical contempt, and as punishment his speech was condemned and he was sentenced to a probation of warning not to again engage in such speech. Such action constitutes a serious curtailment of free speech and further constitutes a prior restraint of petitioner's speech as legal advocate. Such action constitutes state action amenable to injunctive relief *Shelly v. Kraemer*, 334 U.S. 1, 68 S.Ct. 836; *Brinkerhoff Faris Trust & Savings Company v. Hill*, 281 U.S. 673, 50 S.Ct. 451; The *Civil Rights Cases*, 109 U.S. 3, 3 S.Ct. 18. Moreover, it is no answer to the demands of the First Amendment right of free speech that the act of curtailing free speech is incidental to the regulation of professional misconduct, "For a state may not," said the

Court in *NAACP v. Button*, (83 S.Ct. 328, 341), "under the guise of prohibiting professional misconduct, *ignore constitutional rights.*" *Schware v. Board of Bar Examiners*, 353 U.S. 232, 77 S.Ct. 752; *Konigsberg v. State Bar*, 353 U.S. 252, 77 S.Ct. 722. Said the Court in *NAACP v. Alabama, ex rel. Patterson*, 357 U.S. 449, 461, 78 S.Ct. 1163, 1171:

> "In the domain of these indispensable liberties, whether of speech, press, or association, the decisions of this Court recognize that abridgement of such rights, even though unintended, may inevitably follow from varied forms of governmental action. * * *"

In *Civil Rights Cases*, supra, it was observed that the Fourteenth Amendment makes void "state action of every kind," which is inconsistent with the guarantees therein contained, and extends to manifestations of "state authority in the shape of laws, customs, or *judicial* or executive proceedings." In speaking for the Court in *Brinkerhoff Faris Trust & Savings Company v. Hill*, supra, Mr. Justice Brandeis similarly postulated: (50 S.Ct. at P. 454)

> "The federal guaranty of due process extends to state action through its judicial as well as through its legislative, executive or administrative branch of government."

In elaborating upon this well-settled principle of constitutional liberty, the Court in *Shelley v. Kraemer*, supra, said: (68 S.Ct. at P. 844)

> "The short of the matter is that from the time of the adoption of the Fourteenth Amendment until the present, it has been the consistent ruling of this Court that the action of the States to which the Amendment has reference, includes action of state courts and state judicial officials. Although, in construing the terms of the Fourteenth Amendment, differences have from time to time been expressed as to whether particular types of state action may be said to offend the Amendment's prohibitory provisions, *it has never been suggested that state court action is immunized from the operation of those provisions simply because the act is that of the judicial branch of the state government.*"

And finally the Court has held that our courts, acting through our judges, may be guilty of forging ex post facto laws. When this occurs the reach of the Fourteenth Amendment extends to such conduct. *Bouie v. City of Columbia*, 378 U.S. 347, 84 S.Ct. 1697. Thus, our courts and our judges are not enclaves immune to the commands of our constitution. Defendant judges therefore were without authority to condemn petitioner as a contemnor simply because a discussion of the issue of bias may have been inherently insulting to the witness whose bias was in controversy. There must be more. There is not even a suggestion from any quarters in these proceedings that petitioner's brief was disruptive of the orderly processes of the court or that it constituted an imminent threat to the administration of justice. At best, the most that can be inferred from

the conduct of the defendant state judges is that their sensitivities may have been offended by the style of petitioner's speech. But the law of contempt "is not made for the protection of judges who may be sensitive to the winds of public opinion." *Craig v. Harney*, 331 U.S. 367, 67 S.Ct. 1249. In *Craig* the Court had for consideration the question of the validity of a contempt conviction of an editor who had characterized the decision of the trial judge as "highhanded," a "travesty on justice," and had said that his decision had "outraged" public opinion, and that his ruling properly "brought down the wrath of public opinion upon his head" and that the party litigant involved "seems to be getting a raw deal." In holding that there was no justifiable basis for a conviction for contempt, the Court said: (67 S.Ct. at P. 1255)

> "This was strong language, intemperate language, and, we assume, an unfair criticism. But a judge may not hold in contempt one 'who ventures to publish anything that tends to make him unpopular or to belittle him * * *.' The vehemence of the language used is not alone the measure of the power to punish for contempt. The fires which it kindles must constitute an imminent, not merely a likely, threat to the administration of justice. The danger must not be remote or even probable; it must immediately imperil.
>
> * * *

> "* * * But the law of contempt is not made for the protection of judges who may be sensitive to the winds of public opinion. Judges are supposed to be men of fortitude, able to thrive in a hardy climate. Conceivably a campaign could be so managed and so aimed at the sensibilities of a particular judge and the matter pending before him as to cross the forbidden line. But the episodes we have here do not fall in that category. Nor can we assume that the trial judge was not a man of fortitude."

In the case of *In Re Sawyer*, 360 U.S. 622, 79 S.Ct. 1376, the Court held that an attorney who was acting as defense counsel in a criminal prosecution for a Smith Act violation could not be disciplined for comments during his speech concerning the trial. These remarks of his included observations noting "horrible and shocking" events during that trial, the impossibility of a fair trial, the disregarding of the rules of evidence, and the creation of new crimes during the trial. The court held that such comments could not amount to professional misconduct within the meaning of the canons of ethics.

But we are not here dealing with irrelevant, scandalous, vituperative, opprobrious, or willfully insolent language. We are dealing with a relevant and critical argument, which resides in the very center of a legal controversy involved before the Louisiana Supreme Court. Every statement made in petitioner's original brief is based upon the record in that case and represents reasonable inferences to be drawn from that rec-

ord and was presented in the nature of legal advocacy or argument in furtherance of the legal rights of his client. *Holt*, as well as *In Re McConnell*, 82 S.Ct. 1288 (1962), and *In Re Little*, 92 S.Ct. 659 (1972), teach that such speech is part of due process and may not be curtailed or suppressed by the imposition of contempt sanctions, as was done in this case. Said the Court in *In Re McConnell*: (82 S.Ct. at P. 1292)

> "* * * The arguments of a lawyer in presenting his client's case strenuously and persistently cannot amount to a contempt of court so long as the lawyer does not in some way create an obstruction which blocks the judge in the performance of his judicial duty. The petitioner created no such obstacle here."

The "breathing room" of free speech ordains a wide "latitude" for "counsel vigorously espousing a client's cause," *In Re Little*, 92 S.Ct. at 660, and this in turn contributes to creating a "vigorous independent bar," a condition indispensable to an effective and meaningful administration of justice. In postulating these notions of our concept of justice the Court in *In Re McConnell* said: (82 S.Ct. at P. 1292)

> "While we appreciate the necessity for a judge to have the power to protect himself from actual obstruction in the courtroom, or even from conduct so near to the court as actually to obstruct justice, it is also essential to a fair administration of justice that lawyers be able to make honest good-faith efforts to pre-

> sent their clients' cases. An independent judiciary and a vigorous, independent bar are both indispensable parts of our system of justice. * * *"

The action of the state judges in condemning petitioner's speech essential to the advocacy of his client's rights denies petitioner of due process and must be stricken with nullity and enjoined.

(b) Denial Of A Hearing Violates Due Process

The sanctions of reprimand and warning were imposed without prior notice, without prior complaint and without a hearing. Such action violates the due process rights of petitioner.

It is undisputed that defendant state judges had petitioner's brief under consideration for several weeks before contempt sanctions were imposed without a hearing. On that account alone he was entitled to a hearing. As the Court said in *Holt*, supra: (85 S.Ct. at P. 1378)

> "And it is settled that due process and the Sixth Amendment guarantee a defendant charged with contempt such as this 'an opportunity to be heard in his defense — a right to his day in court — * * * and to be represented by counsel.' "

Groppie v. Leslie, 92 S.Ct. 582, is a case in point. Two days after engaging in allegedly contemptuous

acts the Wisconsin legislature, without notice of any kind or opportunity to present matters in defense or extenuation, adjudged Groppie in contempt. The Supreme Court reversed, holding that Groppie was denied of due process because he was denied of a hearing.

Not only must a hearing be granted, but where the contemptuous conduct is sufficiently provocative to create a bias in the victim of the contempt, the hearing must be conducted by another judge, where the victim is a judge. *Mayberry v. Pennsylvania*, 400 U.S. 455, 91 S.Ct. 499; *In Re Murchison*, 349 U.S. 133, 75 S.Ct. 623; *Offutt v. United States*, 348 U.S. 11, 75 S.Ct. 11; *Cooke v. United States*, 267 U.S. 517, 45 S.Ct. 390.

Due process is "a law which hears before it condemns, and which proceeds upon inquiry, and renders judgment only after trial." *Trustees of Dartmouth College v. Woodward*, 4 Wheat 518, 4 L.Ed. 629. Further, said the Court in *Holden v. Hardy*, 169 U.S. 366, 389, 390, 18 S.Ct. 383, 387:

> "* * * It is sufficient to say that there are certain immutable principles of justice, which inhere in the very idea of free government, which no member of the Union may disregard, *as that no man shall be condemned in his person or property without due notice, and an opportunity of being heard in his defense.*"

Thus in condemning petitioner without notice and without a hearing as the state judges did, they de-

prived petitioner of due process. Their action therefore must be reversed.

(c) The Sanction Of Warning Constitutes A Prior Restraint Of Speech

Defendant state judges, in inflicting punishment upon petitioner, have adopted a principle of constitutional law contrary to that reaffirmed by the Supreme Court in *NAACP v. Button*, supra, to the effect that "* * * regulatory measures * * * no matter how sophisticated, cannot be employed in purpose or in effect to stifle, penalize, or curb the exercise of First Amendment rights." (83 S.Ct. at P. 341) The sanction of "warning" superimposed upon the sanction of "reprimand" inflicted upon petitioner by defendant state judges exists as a continuing threat against petitioner in connection with all of his future functions as legal advocate. Defendants have not told petitioner what words he has used, what speech he has uttered which constitute "insulting and irrelevant criticism" in violation of the state law in question. Thus, the sanction of "warning," based as it is upon undisclosed "insulting or irrelevant criticism," will necessarily operate only to impair the discharge of his duty as counsel in advocating the legal rights of his clients, forasmuch as he must thus proceed at his peril into the unknown jaws of this sanction of warning. This impairment looms large and ominously against the backdrop of the essence of legal advocacy, which is a form of free trade in ideas. This is especially true because, should petitioner hereafter inadvertently do what he has not been told he has done, but for which he has been con-

demned, he could be imprisoned for a period of ten days or pay a fine of TWO HUNDRED AND NO/100 ($200.00) DOLLARS or both. LSA-R.S. 13:4611 in part pertinent provides:

> "(A) The supreme court, the courts of appeal, the district courts, family courts, juvenile courts and the city courts may punish a person adjudged guilty of a contempt of court therein, as follows:
>
> (1) For a direct contempt of court committed by an attorney at law, by a fine of not more than one hundred dollars, or by imprisonment for not more than twenty-four hours, or both; *and, for any subsequent contempt of the same court by the same offender*, by a fine of not more than two hundred dollars, or by imprisonment for not more than ten days, or both;"

Defendant state judges failed to state what specific speech appellant uttered that is offensive. They have failed to single out such speech either at the time the punishment of reprimand and warning were imposed or during the pendency of these proceedings. Petitioner therefore must necessarily guess at his peril about the prohibited speech. The chilling effect upon petitioner's exercise of his First Amendment privilege of such a dangling Damocles' sword is self-evident. Such a proposition violates the elementary standards of free speech. "When one must guess what conduct or utterance may lose him his position, one necessarily will

'steer far wider of the unlawful zone * * *'" *Speiser v. Randall*, 357 U.S. 513, 526, 78 S.Ct. 1332, 1342. Moreover, "The threat of sanctions may deter * * * almost as potently as the actual application of sanctions." *NAACP v. Button*, supra. Where that type of situation arises the Supreme Court in *Keyishian v. Board of Regents of University of State of New York*, 87 S.Ct. 675, 684, said:

> "* * * The danger of that chilling effect upon the exercise of vital First Amendment rights must be guarded against by sensitive tools which clearly inform * * * what is being proscribed. * * *"

Petitioner can no longer engage in "vigorous advocacy" without jeopardy because of the continuing sanction of warning. Petitioner's professional advocacy, therefore, is thereby truncated and his right to free speech inhibited, accompanied by a corollary impairment of his right to earn a living. Such a prior restraint of speech is proscribed. *Freedman v. State of Maryland*, 380 U.S. 51, 85 S.Ct. 734.

The court in *Freedman* adverted to its prior decision in *Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495, 503, 72 S.Ct. 777, 781, where the Court there stated, "Any system of prior restraints of expression comes to this court bearing a heavy presumption against its constitutional validity." It is difficult to conceive of an area of free speech in a democratic society which can equal in significance and indispensability the free

speech necessary for effective legal advocacy before our courts, where redress of grievances occur.

Thus defendant justices of the Louisiana Supreme Court have burdened petitioner's duty of legal advocacy with a continuing threat of imprisonment or other lesser or graver sanctions for contempt, simply because petitioner vigorously advocated the legal rights of his client which included a critical statement of events and transactions appearing of record in the case before the court as a justiciable controversy in an application for redress of grievous judicial errors. Such conduct amounts to misuse of power possessed by virtue of state law and results in a denial of petitioner's constitutional liberty. *Cooper, et al v. Aaron, et al*, (1958), 358 U.S. 1, 78 S.Ct. 1401; *State of Missouri ex rel., Gaines v. Canada, et al*, (1938), 305 U.S. 337, 59 S.Ct 232; *Monroe v. Pape*, 365 U.S. 167, 81 S.Ct. 473; *United States v. Classic*, 313 U.S. 299, 61 S.Ct. 1031; *Pyle v. Kansas*, 317 U.S. 213, 63 S.Ct. 177; *Hague v. C.I.O.*, 307 U.S. 496, 59 S.Ct. 954; *Birnbaum v. Trussell*, 371 F.2d 672; *Basista v. Weir*, 340 F.2d 74; *Nesmith v. Alford*, 318 F.2d 110; *Cohen v. Norris*, 300 F.2d 24; *Hughes v. Noble*, 295 F.2d 495; *Brazier v. Cherry*, 293 F.2d 401; *Coleman v. Johnston*, 247 F.2d 273; *United States, ex rel. Potts v. Rabb*, 141 F.2d 45; *Valle v. Stingel*, 176 F.2d 697; *Cancino v. Sanchez*, 379 F.2d 808; *Jenks v. Henys*, 378 F.2d 334; *Brown v. Brown*, 363 F.2d 992; *Morgan v. Labiak*, 368 F.2d 338; *DeWitt v. Pail*, 366 F.2d 682; *Smith v. Hampton Training School for Nurses*, 360 F.2d 577; *Rivers v. Royster*, 360 F.2d 592.

In an almost identical factual context, the Court of Appeals, Fifth Circuit, in *Polk v. State Bar of Texas*, 480 F.2d 999 (1973), held that in such a situation constitutional rights are infringed and must be vindicated.

(d) Rule IX, Section 7, Of The Louisiana Supreme Court Is Void For Overbreadth And Vagueness

Rule IX, Section 7 of the Louisiana Supreme Court reads as follows:

> "The language used in any brief or document filed in this Court must be courteous, and free from insulting or irrelevant criticism of any person, individually or officially, or of any class or association of persons, or any court of justice or other institutions. Any violation of this rule shall subject the author or authors of the brief or document to the humiliation of having the brief or document returned, and to punishment for contempt of the authority of the Court."[2]

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[2]This rule was amended, effective January 1, 1974, to include *relevant* criticism of any person. The rule now reads:

> "The language used in any brief or document filed in this Court must be courteous, and free from insulting criticism of any person, individually or officially, or of any class or association of persons, or any court of justice or other institutions. Any violation of this rule shall subject the author or authors of the brief or document to the humiliation of having the brief or document returned, and to punishment for contempt of the authority of the Court."

Relevancy is no longer a guiding star. The rule is a catch-all net without standards or guidelines. Everyone must guess as to what language is permitted or prohibited.

Petitioner was found guilty of a violation of this rule. Significantly the defendant judges did not single out the words, phrases or even the language contained in the brief which they considered offensive and in violation of the rule. In support of their motion for summary judgment they relied upon only one affidavit and it was the affidavit of Mr. Justice Dixon. Even in this affidavit no reference whatever is made to any specific language, any specific word or specific phrase that was considered and is considered offensive or in violation of the rule. The only reference to the content of the brief consists of a quotation of the adjudication of guilt included in the opinion of the Louisiana State Supreme Court of May 7, 1973, as heretofore recited herein. After thus restating the decree in controversy, Mr. Justice Dixon in his affidavit says further *only*:

> "Affiant further avers that the discourteous language referred to is indeed in violation of Rule IX, Section 7 of the rules of the Supreme Court of Louisiana."

Thus, without singling out any word or any phrase, defendant state judges, in applying this Court rule, condemned petitioner for "discourteous * * *, insulting and irrelevant criticism" of a witness whose bias was a justiciable controversy before the State Supreme Court. Such a finding operates to expand the already overbreadth compass of this rule. As thus construed and applied, the rule strikes directly and endemically at free speech in the area of due process, because it strikes at a lawyer's argument. Argument is a noun which describes the expression of critical

judgment. To express a critical judgment is to express a criticism. Thus the "discourteous criticism" proscription embodied in the decree of sanction imposed against petitioner is directed at argument just as is the finding and condemnation of "insulting and irrelevant criticism." Legal argument, however, is the essence of professional advocacy. Professional legal advocacy is the sine qua non of due process. Thus, the "discourteous criticism" proscription is directed against the exercise of the right to due process, which involves the element of freedom of speech to attain the ends of justice.

There is no suggestion by the defendant judges that petitioner engaged in boisterous conduct; or that he disobeyed an order of the Court; or that he employed vituperative, opprobrious or willfully insolent language; or that he was disrespectful of the court or the judges. On the contrary, petitioner was condemned simply because he discharged his duty to argue the issues involved in the justiciable controversy presented by the litigation before the Louisiana Supreme Court. He confined his argument to the issues involved and engaged in nothing irrelevant. As the dissenting opinion of Mr. Justice Summers observes:

> "I agree with the reasons assigned and the result reached in all respects except the reprimand of plaintiff's counsel. The language of the brief which the Court finds to deserve this treatment is *counsel's version of the facts and testimony which he interprets.* Counsel is entitled to charge a witness with a bias if he

finds a basis for it in the record. Of course, we may not agree with his version of the evidence, but we should not deny him the right to argue his point in the strongest terms.

"* * * The bias he charges is not only not irrelevant, *it is the very basis of this entire controversy.*"

In filing the brief, petitioner's client was exercising her First Amendment privilege "to petition the government for the redress of grievances" and, in drawing inferences from the undisputed testimony involved and in expressing critical judgments as to that testimony, petitioner, as her attorney, was exercising his First Amendment privilege of engaging in legal advocacy. While the language of the brief filed by petitioner may exemplify rhetorical excesses or exaggered metaphors, it is neither vituperative nor scurrilous nor offensive. The words used were plain English and wholly appropriate to support the charge of bias. If the charge of bias was "insulting", it was inherent in the issue of bias raised, an issue which had to be raised in order to protect the legal rights of the client. The worst that can possibly be said about the argument in the brief is that it instances "vigorous advocacy." But "the First Amendment also protects vigorous advocacy, certainly of lawful ends, against governmental intrusion." *NAACP v. Button*, 83 S.Ct. 328, 336. And the mere fact that the defendant state judges labeled appellant's brief as "insulting and irrelevant criticism" is not enough because "a State cannot foreclose the exercise of constitutional rights by mere labels."

NAACP v. Button, supra. Certainly "vigorous advocacy" falls within the broad range of constitutionally protected speech. *Papish v. Board of Curators of University of Missouri*, 93 S.Ct. 1197 (1973).

The overbreadth of the Court rule in controversy as interpreted and applied renders it unconstitutional. *Gooding v. Wilson*, 92 S.Ct. 1103 (1972); *Plummer v. City of Columbus, Ohio*, 94 S.Ct. 17 (1973). Any statute or rule regulating speech must be so drawn or construed as to punish only *unprotected* speech. Said the Court in *Gooding*, (92 S.Ct. at p. 1106):

> "* * * In other words, the statute must be carefully drawn or be authoritatively construed to punish only unprotected speech and not be susceptible of application to protected expression. 'Because First Amendment freedoms need breathing space to survive, government may regulate in the area *only with narrow specificity*.' *NAACP v. Button*, supra, 371 U.S., at 433, 83 S.Ct. at 338."

Overly broad statutes are subject to attack without requiring the person attacking them to demonstrate that his own conduct could not be regulated by the statute. In speaking to this, the Supreme Court said in *Gooding*, (92 S.Ct. at 1105):

> "* * * It matters not that the words appellee used might have been constitutionally prohibited under a narrowly and precisely drawn statute. At least when statutes regulate or pro-

> scribe speech and when 'no readily apparent construction suggests itself as a vehicle for rehabilitating the statutes in single prosecution,' *Dombrowski v. Pfister*, 380 U.S. 479, 491, 85 S.Ct. 1116, 1123, 14 L.Ed.2d 22 (1965), the transcendent value to all society of constitutionally protected expression is deemed to justify allowing 'attacks on overly broad statutes with no requirement that the person making the attack demonstrate that his own conduct could not be regulated by a statute drawn with the requisite narrow specificity,' * * *. This is deemed necessary because persons whose expression is constitutionally protected may well refrain from exercising their rights for fear of criminal sanctions provided by a statute susceptible of application to protected expression."

A reading of the brief filed with the Louisiana Supreme Court demonstrates quite unarguably that petitioner was condemned for discharging his professional duty to argue controversial issues before the Louisiana Supreme Court by employing nonobscene, and nonoffensive language, while being appropriately respectful of the Court and the judges of the Court. Such legal argument is obviously protected speech. For if such speech is not protected, then free speech on the streets is meaningless. Free speech on the streets as a means of expressing grievances or protesting governmental action is but a sinister mockery, if free speech in our courts to redress such grievances or arrest offensive governmental action is not protected. Such punishment

of protective speech is constitutionally impermissible. The overbreadth of Rule IX, Section 7 of the Louisiana Supreme Court as applied is at war with the First Amendment right of free speech and is therefore unconstitutional.

Rule IX, Section 7 is also void for vagueness. A resolution of the question of vagueness of this statutory rule at the outset engages one in a definition of the language of the rule. The language used includes the words, "courteous," "insulting," "irrelevant," "criticism," and "institution" among others. The words mentioned, however, are essential to a decision in this case and, therefore, their meanings must be determined and understood if the statutory rule is to survive the constitutional test of due process.

What is a "discourteous criticism"? Or, an "insulting criticism"? The connotations of these terms admittedly are well-known. They are well-known not because of the certainty of their meaning but because of the broadness of their sweep. They encompass denotative values that are mercurial and incapable of intellectual capture and precise identification. A reference to the *Second Edition of Webster's New International Dictionary* is illustrative of this observation. The word "courtesy" is therein defined as follows:

> "1. Courtly politeness, graceful and considerate behavior toward others; as old-world courtesy. 2.a. An act of kindness or favor performed with politeness. 2.b. An expression of respect, or, formerly, or apology. 3. Favor or

indulgence, as distinguished from right; as, a title given one by courtesy. 4.a. Obs. Formal expression of deference, as in bowing. 4.b. A curtsy."

The word "discourteous" does not appear clearly to be the opposite of the word "courtesy." It does appear, however, as its opaque converse. The same authority defines the word "discourteous" as follows:

"Rudeness of behavior or language; ill-manners, incivility; also, a rude act."

The word "rude" is defined as "characterized by roughness; rough; crude; as a rude sketch. 2. Lacking delicacy or refinement; boorish; ungentle; unpolished. Specif: (a.) of untaught or unpolished manners or customs; as, a rude people; uncultured; simple, hence of low rank."

The word "discourteous" is defined to mean "uncivil; rude; wanting in courtesy or good manners." The same authority gives the following words the following definitions:

"*Insult* — to treat with insolence, indignity or contempt by word or action; to affront wantonly. 2. Make an attack on; to assail; assault."

"*Criticism* — the act of criticizing, esp. Unfavorably; faultfinding; censure; as, an act incurring criticism. or review; a critique; as, Addison's criticism of *Paradise Lost*. 2. A sub-

tle point of distinction; nicety, subtlety. 3. The art of judging or evaluating with knowledge and propriety the beauties and faults of works of art or literature; — extended to similar consideration or moral values, of the soundness of scientific hypotheses and procedures, etc. 4. The scientific investigation of the origin, text, composition, character, history, etc. of literary documents, esp. the Bible."

"*Insolent* — 1. Haughty and contemptuous or brutal in behavior or language; overbearing; grossly disrespectful. 2. Proceeding from, or characterized by, insolence. 3. Exceeding due bounds; extravagant excessive. 4. Not customary; novel; strange; unusual. 5. Inexperienced."

Is it the style or the content of an expression that constitutes a courtesy or a discourtesy? According to the dictionary definition it appears that the word "discourtesy" partakes of both style and content. Is it "uncivil" or "rude" (and hence "discourteous") to tell the truth, where the truth is the embodiment of a "rude" act? Do the demands of courtesy require that events be described euphemistically, where their reality is shocking to a sense of cultural niceties? If "courtesy" is an "indulgence," as distinguished from "right," then is it a "discourtesy" to refuse to "indulge" the act of impropriety of a witness, as to which he has no "right," where such an act adversely affects the rights of a litigant, as to which redress is sought? If "courtesy" means "considerate behavior

toward others," does it exclude relevant criticism of the testimony of a witness? Does the word "institution" include political institutions and political principles? Is it an act of "insolence" (and hence "insulting") to express a permissible inference of bias? If a meaningful concept of civility includes candor, intellectual and moral honesty, a sense of institutional integrity and a sense of fair play and political equality, would it constitute an "uncivil" act to withhold the truth? If to insult is to be insolent, and if to be insolent in speech is to exceed "due bounds," are these "due bounds" expanded or contracted by the demands of truth? By the demands of intellectual and moral honesty? By a sense of institutional integrity? By a sense of fair play and political equality? By the demands of legal advocacy? Is it an insult to tell the truth as one sees it?

Without reliable standards the answers to the questions posed and occurring naturally from the nature of the language of the statutory rule are multitudinous in count and equally variant in nature. Without standards, no definitive meanings can be imparted to the words used by the rule, nor can limits be established beyond which their meanings may not travel. The language employed does not inform those who are subject to the rule what conduct on their part will render them liable to its penalties. This statutory rule exists as a catch-all net, capable of ensnaring the innocent as well as the willful. Men of common intelligence, therefore, must necessarily guess as to the meaning of this statutory rule and differ as to its application. Consequently, the practical implementation of this

statutory rule of necessity is affected accordingly as the propensities of those charged with its enforcement may induce them to action. As a result, judges of the Louisiana Supreme Court sit as a censorship body whose function is hedged by no standards of conduct or speech, not even that of relevancy or truthfulness. What is insulting to one may not be insulting to another; similarly, what is discourteous to one may be courteous to another. Discourtesy or courtesy may be the product of style as well as of content of any given speech, depending upon the proclivities of the reader having the power of censorship. For example, does the word "courteous" as used in the rule restrict the style and content of brief writing to Southern courtliness? To Victorian elegance? To Machiavellian chauvinism? To Camelot romanticism or to Mencken's cynicism? Indeed such overbreadth makes it possible to convert the offensive rule into a weapon of comstockery. Such a rule violates the first essential of due process.

Rightly or wrongly, Rule IX, Section 7, is intended and was invoked against petitioner as a broad curtailment of free speech — free speech in the sense of vigorous advocacy before the court. This is of peculiar significance to the determination of the constitutionality of this Rule "for standards of permissible statutory vagueness are strict in the area of free expression." *NAACP v. Button*, 371 U.S. 415, 432, 83 S.Ct. 328, 337. See *Smith v. California*, 361 U.S. 147, 151, 80 S.Ct. 215, 217, 4 L.Ed.2d 205; *Winters v. New York*, 333 U.S. 507, 509-510, 517-518, 68 S.Ct. 665, 667, 671, 91 L.Ed. 840; *Herndon v. Lowry*, 301 U.S. 242, 57 S.Ct.

732, 81 L.Ed. 1066; *Stromberg v. California,* 283 U.S. 359, 51 S.Ct. 532, 75 L.Ed. 1117; *United States v. CIO,* 335 U.S. 106, 142, 68 S.Ct. 1349, 1367, 92 L.Ed. 1849.

While vigorous advocacy is protected by the First Amendment, *NAACP v. Button,* supra; *Thomas v. Collins,* 323 U.S. 516, 537, 65 S.Ct. 315, 325, 89 L.Ed. 430; *Herndon v. Lowry,* supra; the exercise of that protected right conceivably can excite the imposition of the sanctions of the Rule, as was actually done in this case. This is true because the terms of the statutory rule in question are susceptible of no objective measurement. And because of this statutory vagueness, the Justices of the Louisiana Supreme Court possess the power arbitrarily to punish free speech by imprisonment of a litigant's counsel or by the sanctions actually imposed. Such a rule is constitutionally intolerable.

In speaking of such a constitutional infirmity, the Supreme Court in *Connally v. General Construction Company,* 269 U.S. 385, 391, 46 S.Ct. 126, 127, said:

> "That the terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties is a well-recognized requirement, consonant alike with ordinary notions of fair play and the settled rules of law; and *a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its mean-*

ing and differ as to its application violates the first essential of due process of law."

The rule in *Connally* was followed by *Lanzetta v. New Jersey*, 306 U.S. 451, 458, 59 S.Ct. 618, during the course of which the court said:

> "No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the state commands or forbids."

In *Cramp v. Board of Public Instruction of Orange County, Florida*, 368 U.S. 278, 82 S.Ct. 275, the court had for consideration the constitutionality of a Florida statute which required the complaining party to execute a written oath in which he was required to swear, among other things, that he had never lent his "aid, support, advice, counsel or influence to the Communist Party." In noting vagueness, the court observed that the provisions of the statute were completely lacking in terms susceptible of objective measurement and were too broad in scope to convey the meaning to a person of common intelligence as to what was intended by the statute. Concluding against its constitutionality the court said: (82 S.Ct. at P. 280)

> "We think this case demonstrably falls within the compass of those decisions of the court which hold that '* * * a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence

> must necessarily guess at is meaning and differ as to its application violates the first essential of due process of law.' "

In *Baggett v. Bullitt*, 377 U.S. 360, 84 S.Ct. 1316, the Supreme Court again had occasion to apply the principle of constitutional vagueness. The court had under consideration the constitutionality of a statute which required the execution of two oaths by teachers of the University of Washington. The nature of the oath is described by the Court in these words: (84 S.Ct. at P. 1320)

> "The oath required by the 1955 statute suffers from similar infirmities. A teacher must swear that he is not a subversive person; that he is not one who commits an act or who advises, teaches, abets or advocates by any means another person to commit or aid in the commission of any act intended to overthrow or alter, or to assist the overthrow or alteration, of the constitutional form of government by revolution, force or violence."

The other oath involved a 1931 law and reads as follows: (84 S.Ct. at P. 1317)

> " 'I solemnly swear (or affirm) that I will support the constitution and laws of the United States of America and of the State of Washington, and will by precept and example promote respect for the flag and the *institutions* of the United States of America and the State of

> Washington, reverence for law and order and undivided allegiance to the government of the United States.' "

The court declared both statutes requiring the oa. . to be unconstitutionally vague. Among the many provisions and terms employed in these statutes which the court found offended due process because of vagueness was the word "institutions," such as is used in Rule IX, Section 7. In speaking of this, the court made these observations: (84 S.Ct. at P. 1322)

> "* * * And what are 'institutions' for the purposes of this oath? Is it every practice, law, custom, etc., which is a material and persistent element in the life or culture of an organized social group' or every 'established society or corporation,' every 'establishment, especially one of the public character'? The oath may prevent a professor from criticizing his state judicial system or the Supreme Court or the institution of judicial review. Or it might be deemed to proscribe advocating the abolition, for example, of the Civil Rights Commission, the House Committee on Un-American Activities, or foreign aid."

In concluding against the constitutionality of the law involved, the Supreme Court said: (84 S.Ct. at Pp. 1322-1323)

> "Indulging every presumption of a narrow construction of the provisions of the 1931 oath,

consistent, however, with a proper respect for the English language, we cannot say that this oath provides an ascertainable standard of conduct or that it does not require more than a State may command under the guarantees of the First and Fourteenth Amendments.

"As in *Cramp v. Board of Public Instructions*, 'the vice of unconstitutional vagueness is further *aggravated where, as here, the statute in question operates to inhibit the exercise of individual freedoms affirmatively protected by the Constitution.*' 368 U.S. 278, 287, 82 S.Ct. 275, 281. We are dealing with indefinite statutes whose terms, even narrowly construed, abut upon sensitive areas of basic First Amendment freedoms. The uncertain meanings of the oaths require the oath-taker — teachers and public servants — to 'steer far wider of the unlawful zone' *Speiser v. Randall*, 357 U.S. 513, 526, 78 S.Ct. 1332, 1342, 2 L.Ed.2d 1460, than if the boundaries of the forbidden areas were clearly marked. Those with a conscientious regard for what they solemnly swear or affirm, sensitive to the perils posed by the oath's indefinite language, avoid the risk of loss of employment, and perhaps profession, only by restricting their conduct to that which is unquestionably safe. Free speech may not be so inhibited. *Smith v. California*, 361 U.S. 147, 80 S.Ct. 215, 4 L Ed.2d 205; *Stromberg v. California*, 283 U.S. 359, 369, 51 S.Ct. 532, 535, 75 L.Ed. 1117. See also *Herndon v.*

Lowry, 301 U.S. 242, 57 S.Ct. 732, 81 L.Ed. 1066; *Thornhill v. Alabama*, 310 U.S. 88, 60 S.Ct. 736, 84 L.Ed. 1093; and *Winters v. New York*, 333 U.S. 507, 68 S.Ct. 665, 92 L.Ed. 840."

Prohibitions must be clearly defined when they deal with due process. In *Trinkler v. State of Alabama*, 94 S.Ct. 265 (1973), the Court emphasized this principle when it said "[i]t is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined." In articulating the underlying rationale of such a principle, the court quoted approvingly of the language in *Grayned v. City of Rockford*, 92 S.Ct. 2294, as follows: (94 S.Ct. at Pp. 265-266)

> " 'Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what it prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges and juries for resolution on an ad hoc and subjective basis with the attendant dangers of arbitrary and discriminatory application. Third, but related, here a vague statute abuts upon sensitive areas of ba-

sic First Amendment freedoms, it operates to inhibit the exercise of those freedoms. Uncertain meanings inevitably lead citizens to steer far wider of the unlawful zone than if the boundaries of the forbidden areas were clearly marked.'"

It is important to observe that the principle of unconstitutional vagueness applies equally against civil statutes, such as the one involved in this application, as well as to statutes involving criminal sanctions. This was made abundantly clear by the court in *NAACP v. Button*, when the court said: (83 S.Ct. at P. 338)

> "* * * It makes no difference that the instant case was not a criminal prosecution and not based on a refusal to comply with a licensing requirement. The objectionable quality of vagueness and overbreadth does not depend upon absence of fair notice to a criminally accused or upon unchanneled delegation of legislative powers, *but upon the danger of tolerating, in the area of First Amendment freedoms, the existence of a penal statute susceptible of sweeping an improper application.* Cf. *Marcus v. Search Warrant*, 367 U.S. 717, 733, 81 S.Ct 1708, 1717, 6 L.Ed.2d 1127. These freedoms are delicate and vulnerable, as well as supremely precious in our society. *The threat of sanctions may deter their exercise almost as potently as the actual application of sanctions.* Cf. *Smith v. California*, supra, 361 U.S. at 151-154, 80 S.Ct. at 217-219; *Speiser v. Randall*, 357 U.S.

513, 526, 78 S.Ct. 1332, 1342, 2 L.Ed.2d 1460. *Because First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity. Cantwell v. Connecticut,* 310 U.S. 296, 311, 60 S.Ct. 900, 906, 84 L.Ed. 1213."

It is therefore respectfully submitted that the statutory rule in question offends the due process clause of the United States Constitution and should therefore be stricken with nullity.

CONCLUSION

Holt, supra, teaches that in dealing with a lawyer's right of free speech while advocating the rights of his client, the severity of the penalty which infringes that speech is immaterial, and review will be granted even when the fine imposed is only FIFTY AND NO/100 ($50.00) DOLLARS. Petitioner in *Holt* knew what speech was considered offensive. That speech was singled out and acted upon. Petitioner in this application has not been informed of any alleged, offensive speech. He has never been told what it is he has said which is prohibited. He cannot know what it is he must not say in the future to avoid imprisonment. Clearly he has been condemned without due process, and his future speech continues to be grossly curtailed. Furthermore, the free speech right of every lawyer in the State of Louisiana is at stake. These fundamental rights will be vindicated only if petitioner's application is granted. Petitioner, therefore, respectfully prays that a writ of certiorari issue herein to the Court of Appeals, Fifth

Circuit, and finally that the decisions of the courts below be reversed and petitioner's lawsuit and claim for injunctive relief be ordered remanded to the United States District Court, Eastern District of Louisiana, for a three-judge court hearing and for proceedings consistent with the decision of this court and applicable law.

Respectfully submitted,

J. MINOS SIMON
Attorney at Law
1408 Pinhook Road
Post Office Box 52116 OCS
Lafayette, Louisiana 70501

J. MINOS SIMON, PRO SE

CERTIFICATE OF SERVICE

I, J. Minos Simon, petitioner in the foregoing application for writ of certiorari to the United States Court of Appeals, and a member of the bar of the Supreme Court of the United States, hereby certify that on the ____ day of September, 1974, I served a copy of the foregoing petition for writ of certiorari on Mr. Dale C. Wilks, 2-3-4 Loyola Building, Seventh Floor, 234 Loyola Avenue, New Orleans, Louisiana, 70112, counsel of record for the justices of the Louisiana Supreme Court, and to West Publishing Company, St. Paul, Minnesota, by mailing a copy of said petition to each in a properly addressed envelope, postage prepaid.

Lafayette, Louisiana, this ____ day of September, 1974.

J. MINOS SIMON

APPENDIX A

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 73-3734
Summary Calendar*

J. MINOS SIMON,
Plaintiff-Appellant,

versus

JOHN A. DIXON, JR., ET AL.,
Defendants-Appellees.

Appeal from the United States District Court for the Eastern District of Louisiana

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(May 7, 1974)

Before WISDOM, GOLDBERG, and GEE, Circuit Judges.

PER CURIAM: AFFIRMED. See Local Rule 21.[1]

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*Rule 18, 5 Cir.; *see* Isbell Enterprises, Inc. v. Citizens Casualty Company of New York, 5 Cir. 1970, 431 F.2d 409, Part I.

[1]See NLRB v. Amalgamated Clothing Workers of America, 5 Cir. 1970, 430 F.2d 966.

APPENDIX B

[1] UNITED STATES DICTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

J. MINOS SIMON

versus C.A. No. 73-1441-I

JOHN A. DIXON, JR., ET AL

Before the HONORABLE JACK M. GORDON, Judge United States District Court, Eastern District of Louisiana, New Orleans Division on September 19, 1973 at 10:00 A.M.

APPEARANCES:

For the Plaintiff:
J. MINOS SIMON, ESQ.
Attorney-at-Law
1408 Pinhook Building
Lafayette, Louisiana

For the Defendants:
KENDALL L. VICK, ESQ.
Assistant Attorney General
7th Floor 2-3-4 Loyola Building
New Orleans, La.

[2] THE COURT:

Gentlemen, this case does, indeed, present a novel issue for the Court, but an issue, which when one

brushes aside the superficialities, is not in my opinion a truely novel issue or an issue worthy of a great deal of this or any other Court's time. It may very well be that plaintiff in complete good faith and indeed, I'm sure in complete good faith, feels very wronged by what's happened, but that feeling alone does not give rise to a right to recover under the Civil Rights Act or any other act or under the Constitution.

Let me first turn my consideration to the jurisdictional points, again, which are not clear, but because of the rather unique situation, which this matter was presented, we have here a portion of a decision of the Supreme Court of the State of Louisiana contained in a footnote, which states that the plaintiff's brief contains language that is discourteous and is not free from insulting or irrelevant criticism in violation of their Rule 9, Section 7. They went on to say, "We choose not to return the brief on this occasion out of consideration of the client. We impose, instead, the sanctions of reprimand and warning," being significant, I think considering the effect of this language, that the words "sanction, reprimand and warning," are all in the lower case.

[3] Now, in considering and deciding the jurisdictional questions, we're presented initially with the problem of determining what this is. If it were a disciplinary action, I think it's very clear from the authorities that plaintiff's only avenue would be by direct writ of certiorari to the United States Supreme Court. I think this is set forth probably as clearly as anywhere in the 1966 case by Judge Roth in his appendix

to a 1967 decision of the United States Court of Appeals for the Sixth Circuit. The appendix being the District Court decision by United States District Court Judge Stephen J. Roth, in which he stated on Page 625 of 372 F.2d, "The Courts of the State of Michigan have exclusive jurisdiction over the admission of attorneys, the regulation of the practice of law, and the discipline and disbarment of attorneys, so far as the practice of law in the State Courts is concerned. The Federal Courts do not have jurisdiction to review an order of a State Court disbarring an attorney in that state for misconduct." In *Theard versus United States,* the Supreme Court of the United States said, "It is not for this Court, except within the narrow limits for review open to this Court, as recently canvassed in *Konigsberg versus State Bar of California* and *Schware versus Board of Bar Examiners,* to sit in judgment. The two judicial systems of courts, the State judicatures [4] and the Federal judiciary, have autonomous control over the conduct of their officers, among whom, in the present context, lawyers are included." In going back to Judge Roth's words, "and the limits of review referred to are violations in the course of disbarment proceedings, of the due process or equal protection clauses of the Fourteenth Amendment, and a petition for a writ of certiorari to the Supreme Court of the United States is the only method by which this review may be had. A Federal District Court has no original jurisdiction of a proceeding disbarring an attorney from practice in State Courts, though in the State Court proceeding the attorney may raise question based upon his rights under the Federal Constitution for eventual review by the United States Supreme

Court under its certiorari jurisdiction." Now, many of the defects about which plaintiff complains here are Fourteenth Amendment and equal protection and due process clauses, alleged violations by the Supreme Court in failure to give him notice or to give him a hearing. If indeed, the action by the Louisiana Supreme Court here were a formal disciplinary action or had the effect of a formal disciplinary action, then in my opinion, although constitutional issues were raised, the exclusive right or exclusive jurisdiction would be by writ of certiorari to the United States Supreme Court. I don't believe, [5] however, that is the effect of this footnote. As I stated, I know of no direct affect upon the plaintiff and I know of no indirect affect, other than the allusionary affects, which plaintiff has generated this footnote on him as a lawyer. As I stated, I'm impressed by the fact the the significant words, "sanction, reprimand and warning," are all in the lower case, indicating not the formality of the imposition of discipline of the plaintiff, but, rather a formal warning or an informal communication to the plaintiff that the Supreme Court of Louisiana did not feel that his brief was in keeping with standards, which it would require. Now, obviously, plaintiff could derive benefits from this. I don't think there is any lawyer, who's practiced before the Courts at any time, who has not received an informal warning or reprimand from the Court, particularly a lawyer who engages in vigorous advocacy. It happens daily on the trial court level and frequently it's newspaper reporters that are present when it's happening and it's published in newspapers and certainly to the extent that a lawyer might be held in ridicule by the general pub-

lic has a greater affect on him than something that's published as a footnote of the official publication of West Publishing Company, so that Courts in carrying out their duty of administering justice and acting as referees must on [6] occasion and in the trial court level, certainly the most frequent, informally advise counsel that their actions exceed the bounds of propriety for lawyers. I'm certain that because of the nature that an appellate court works, it only had two choices in this matter. It could have returned the brief in accordance with its rule, in which event there would have been no public knowledge, though the plaintiff would certainly have had the same quandary as to what he said that offended the Court or that he considered to be in violation of the rule, for it cannot with propriety, in my opinion, communicate with the plaintiff informally. It could have invoked a formal disciplinary proceeding. This certainly would have been a rather drastic step for the Court to take, if it chose merely to informally advise the plaintiff in what appears to me to be not harsh fashion. So with regard to the first point as to whether or not the original jurisdiction should be in the Supreme Court, because it's a disciplinary action, I conclude that it is not a disciplinary action and therefore, it is not such an action for exclusive jurisdiction, would be by writ of certiorari to the United States Supreme Court. Having made this conclusion, I must decide first whether there is jurisdiction for this Court to consider it as being a violation of the rights [7] of plaintiff under the Constitution, a violation of Title 42, Section 1983 of the United States Code. With regard to the jurisdictional question, here we're not entirely clear, because as the Supreme Court

has stated in *Pierson versus Ray*, judges should have immunity from litigation to harrass them, in order to properly carry out their duty. On the other hand, the Supreme Court has, also, indicated that Section 1983 in *Mitchum versus Foster*, they indicated that Section 1983 was designed to provide a means of redress for all State actions, whether they be executive, legislative or judicial. So, although, the matter is not at all free from doubt, I think the jurisdiction of this Court against the judges of the Louisiana Supreme Court who have been sued here is not at all clear. I'll resolve this doubt in favor of the plaintiff in view of the general purpose and intent of Section 1983. I think to do otherwise would be to conclude that all State judges were immune from any type of action under 1983. I believe this would be contrary to the purpose and intent of Section 1983. So I'll conclude that the Court has jurisdiction and then I'll turn, therefore, to the Motions for Summary Judgment.

Now, in this connection, I'm going to grant the Motion for Summary Judgment filed by the defendants. My reasons for granting the Motion for Summary Judgment [3] are, I think abundantly clear and get to the very basic point that I made at the beginning of my decision today when I stated that although there were many issues to cloud the situation, it actually was quite simple. I would like to discuss first the basic philosophical premise, which I think has eluded plaintiff in this case and which is really the answer to the entire case, in my opinion. Plaintiff has cited many cases to the Court concerning freedom of speech and cited many cases to the Court concerning vagueness

of statutes and regulations, but none of those cases have dealt with lawyers and none of those cases have dealt with rules applying solely to lawyers. The cases for freedom of speech, indeed, as I think all counsel have indicated during oral argument, protected the rights of persons to state publicly words, which might be considered obnoxious by many, but I don't think those cases in any way guaranty to a lawyer the same conduct in a courtroom. Indeed, we have in the past decade witnessed the effects of lawyers in many courts throughout the land conducting themselves in a manner not in keeping with the traditions of the legal profession. We have seen how trials have been disrupted. I don't mean to infer that plaintiff's conduct in this case is anything like that, but we have seen the effects of allowing — permitting lawyers to have free rein and [9] that in such an atmosphere, justice cannot take place. Therefore, I think it very clear that we should all understand and this Court has at least a very firm belief in the fact that judges must have the authority, if they are to administer justice, to require lawyers to conduct themselves with civility and require a higher standard of lawyers in the conduct of their practice than could be reasonably imposed on individuals under the First Amendment in connection with their general activities.

The same feeling applies to Counsel's citations with regard to the vagueness of the rule of the Supreme Court. In this connection, I don't think there is any substantial constitutional question raised. The cases, which Counsel have cited concerning the validity of the State rule of practice, Counsel has cited to the Court

many cases involving vagueness, which have laid a test down. In order to pass muster under the Constitutional rules applicable to statutory vagueness, a statute must be susceptible to understanding of a normal person. I think this is the common denominator, indeed, of cases cited to the Court. All of this ignores the fact that lawyers are not common persons, insofar as their practice of law is concerned and that they deal in words; that they deal in niceties of language; that by virtue of [10] their dedication to the traditions of the profession, which are absolutely essential to its existence, that they are supposed to know how to conduct themselves in such fashion that they can be guided by general terms. In this connection, I think it significant to note that the pertinent portions of the rule of the Supreme Court complained about by the plaintiff is not merely different from the corollary rule of the United States Supreme Court. Though the words may be different, in this Court's opinion they would be equally susceptible to the criticism of vagueness, if such criticism were available to lawyers to adopt the position on vagueness, which the plaintiff asks the Court to adopt, which would, indeed be to vitiate all rules of ethics, all other general rules pertaining to the legal profession, because they are of necessity concise, they are of necessity vague, because they relate and apply to people, whose professional training, judgment and dedication is that such great specificity is not or should not be required. So I do not find any substance to the contention of plaintiff that the rule of the Supreme Court is invalid as being unconstitutionally vague. Indeed, I do not find it to present a

substantial constitutional question, which would require ruling by a three-judge court.

[11] With regard, then to the merits of the case, as the Court must decide in a decision for a Motion for Summary Judgment, there doesn't appear to be any dispute as to the facts in this case, as to whether the rights of the plaintiff in this situation have been violated by the action of the Supreme Court, whether there has been a violation of Section 1983 of the United States Code. As I have stated, I conclude that there has not been. In this connection, I think my previous comments relating to the manner of the informal statement to the plaintiff is entirely indicative of the large part of the rationality of my decision. I think that all Courts have an inherent right to warn lawyers practicing before them when their conduct either verbal or written exceeds the bounds that the Court expects and indeed, I think lawyers have a corollary duty to accept such warning. Now, the nature of litigation is an acrimonious process and it would be entirely out of keeping with human nature to expect that lawyers would always agree with judges, if judges criticised them or to expect that judges would always be right when they criticise lawyers or that the particular method of criticism could not have been handled in one way or the other, but the significant point is that lawyers must expect from judges supervision and this supervision must of necessity [12] entail criticism; sometime favorable criticism and sometime unfavorable criticism. When one assumes the oath required of a practitioner of law and the commensurate benefits and privileges, he cannot cast out his responsibilities. This

is not to say that every time a judge's criticism will be right. Just as there are ways for judges to properly be civil to lawyers in their criticism, there are, indeed ways by which lawyers can informally seek redress. In this Court's opinion, such informal seeking of redress from Courts or informally finding out in this case what was offensive and what could be done to correct it, would certainly be more in keeping with the traditions of the legal profession than involving the Courts in long drawn out litigation. I emphasize that a lawyer, in dealing with Courts, except in rare instances, where there has been some clear and direct abuse, should bear in mind the nature of the relationship. The lawyer is acting as an officer of the Court and if every time a lawyer disagrees with the manner, in which his conduct was being supervised by a particular State Court judge or a justice of the Supreme Court or some intermediate appellate court, if he were able to run to a Federal Court, in order to air his grievances, whether real or fantasy, we would have the most chaotic situation in the world. [13] Indeed, in this case, if this Court were to take any action as requested by plaintiff, which his specific request being that the Court order the State Supreme Court to delete a part of its opinion, this Court would in effect be writing a decision for the Supreme Court for the State of Louisiana. I consider that this result would be totally out of keeping with the doctrines of comity and in view of the fact that I don't feel any substantial harm has come to plaintiff and that the actions by the Supreme Court in this case are no more than any Court must do in carrying out its responsibility of supervising lawyers practicing before it, I feel that the plaintiff has

in this case not stated a cause of action under Section 1983.

Accordingly, I grant the Summary Judgment in favor of the defendants.

I note that the defendant, West Publishing Company, has not made an appearance in the record in this case, nor does it have any representation. Gentlemen, in order to clarify this matter and have it complete, the Court will take notice of the fact that the effect of its decision, insofar as the defendant justices of the Supreme Court is dispositive of the issue between the plaintiff and the defendant, West Publishing Company, therefore, I'll order that the Summary Judgment be [14] granted in favor of West Publishing Company.

Mr. Simon, unless you have some reason that you want to keep it alive as to West Publishing Company, I'm merely trying to put the case in final posture without the necessity of additional — I don't know of any reason why I shouldn't do this. Is there any? I'm trying to think of efficiency for you, insofar as you wish to appeal.

MR. SIMON:

I have no objection to your going ahead with that phase of your decision.

THE COURT:

All right. I think, perhaps a more orderly way, on reflection, than granting a Summary Judgment in favor of them would simply be to dismiss the suit as

to West Publishing Company, because of the Court's finding with regard to the individual defendants, in that that finding would make moot the action against West Publishing Company.

I grant the Summary Judgment in favor of Mr. Moise, Clerk of the State Supreme Court, as well as the justices.

Gentlemen, thank you very much.

* * * *

[15] *CERTIFICATE*

I, D. Trent Thurman, Official Court Reporter in and for the United States District Court for the Eastern District of Louisiana, New Orleans Division, do hereby certify:

That the foregoing transcript of testimony consisting of fourteen (14) pages was reported by me in stenotype and transcribed under my personal direction and supervision, and is a true and correct transcript to the best of my ability and understanding.

/s/ D. TRENT THURMAN
D. Trent Thurman,
Official Court Reporter